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Subject: OCSPP News for December 31, 2020

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Asbestos Restrictions Needed to Protect Workers, EPA Concludes

Pat Rizzuto, Bloomberg Law
https://news.bloomberglaw.com/environment-and-energy/asbestos-restrictions-needed-to-protect-workers-epa-concludes?context=search&index=4

Asbestos regulations will be developed to protect certain car mechanics, oil drillers, and other workers from cancer they might get from working with or near the mineral, the EPA said Wednesday.

The Environmental Protection Agency on Wednesday published its final risk evaluation for cancer-causing chrysotile asbestos, concluding that 16 of 32 uses of the material pose unreasonable risks to human health, including workers and consumers.

Chrysotile asbestos uses that pose an unreasonable risk include use in diaphragms used in the chlor-alkali industry, sheet gaskets, brake locks used in the oil industry, aftermarket auto brakes and linings, vehicle friction products and other gaskets. Most consumer products containing the material have been discontinued but it is still used industrially.

Importation of raw chrysotile and chrysotile-containing products, the use of certain brakes by NASA and the disposal of sheet gaskets processed or used industrially do not pose an unreasonable risk, the EPA found.

The finding means the EPA must immediately begin to develop rules restricting the use of chrysotile. The agency said it has one year to propose actions it might take, but it typically launches the development of such rules within a few weeks of issuing its final conclusions.

At-Risk Jobs

At-risk jobs include certain chemical manufacturing workers who turn chrysotile asbestos into specialized equipment that produces chlorine and caustic soda; chemical and other manufacturing personnel who work with specialized heat-resistant seals; oil drilling workers handling and disposing of equipment used in specialized oil rig brakes; and car mechanics working with older, "aftermarket" brakes containing asbestos.

Do-it-yourself consumers replacing older types of brakes on cars also face too much increased risk of cancer, the EPA said.

Companies using asbestos-containing equipment aren't easily identified. But three chemical manufacturers—Olin Corp., Occidental Petroleum Corp., and Westlake Chemical Corp.—own the 15 U.S. plants that use asbestos to make chlorine and caustic soda, according to information the EPA used for its analysis.

These companies. called "chlor-alkali manufacturers," imported 100 metric tons of chrysotile in 2019 and 681 metric tons in 2018, according to U.S. Geological Survey data released in January.

More to Come

The EPA didn't expand its final risk assessment to evaluate ways other workers could inhale chrysotile fibers, including demolition workers; workers in the bathroom fixture industry and other industries that use talc, which may be contaminated with asbestos; and those working with asbestos-containing brakes for vehicles like motorcycles, snowmobiles, and tractors.

An EPA science advisory panel made those and other recommendations as it critiqued the agency's draft analysis.

Nor did the agency analyze risks from five other types of asbestos. The agency said it will include them in a second, or supplemental, analysis.

That review also will look at ways people may be exposed to asbestos from products no longer made with the mineral—like floor tiles and insulation—but that could lead to people inhaling the deadly fibers.

Is the end near for chrysotile asbestos?

Britt E. Erickson, Chemical & Engineering News

https://cen.acs.org/policy/chemical-regulation/end-near-chrysotile-asbestos/98/web/2020/12

Despite intense lobbying by the chemical industry, the US Environmental Protection Agency is set to address the cancer risks posed by all current uses of chrysotile asbestos. In a final assessment released Dec. 30, the agency identified unreasonable risks to workers and consumers who handle chlor-alkali diaphragms, gaskets, aftermarket automobile brakes, and other products that contain the carcinogenic substance.

The EPA only evaluated current uses of chrysotile asbestos, the form that is still imported into the US. The agency plans to evaluate risks from former uses, such as construction materials in older buildings, in a separate assessment. In that second part, the EPA will consider chrysotile and 5 other types of asbestos fibers. The agency expects to have a draft scoping document, which describes the uses that it will evaluate, by mid-2021 for that additional assessment.

The chlor-alkali industry is the sole recipient of imported chrysotile asbestos in raw form, according to the EPA. The industry uses it to construct semipermeable diaphragms that separate chlorine and sodium hydroxide. Asbestos is also incorporated into gaskets and automobile brake liners, which the US imports as finished products. The amount of asbestos imported into the US is unclear, but the EPA must start collecting such information under a Dec. 22 federal court ruling.

Asbestos is one of the first 10 high-priority chemicals that the EPA is evaluating under 2016 revisions to the Toxic Substances Control Act (TSCA). Many people call asbestos the poster child for why the law needed to be updated. Before TSCA was revised, the EPA spent more than a decade trying to ban existing uses of asbestos. The bar was too high, though, and despite mounds of evidence showing the dangers of the substance, the EPA was unable to justify banning it.

Under the amended law, the EPA has 1 year to propose actions to protect people from the risks it identified in the final assessment. Such action could include banning asbestos or limiting how it is used.

EPA Finalizes Criticized Asbestos Evaluation But Agrees To Narrow Focus

Maria Hegstad, Inside TSCA

https://insideepa.com/tsca-news/epa-finalizes-criticized-asbestos-evaluation-agrees-narrow-focus

EPA has finalized without significant change its long-awaited TSCA evaluation of asbestos, reaching the same unreasonable risk conclusions as its widely criticized draft version, with the most obvious change being the agency's agreement with its advisors to narrow the name so it focuses on only the chrysotile fiber type officials assessed.

Issued late on Dec. 30, the final chrysotile asbestos evaluation finds 16 of 32 uses of chrysotile asbestos pose unreasonable risks to workers, consumers or bystanders, triggering a one-year deadline under the revised Toxic Substances Control Act (TSCA) to propose risk management rules to mitigate those risks.

But because the agency is preparing to conduct a supplemental evaluation of asbestos' legacy uses in 2021, which will include additional fiber types, it sets the stage for the Biden EPA to reconsider how it wishes to evaluate and address the toxic substance -- even as officials craft risk management rules to address the unreasonable risks identified in the narrow, just-completed evaluation.

As such, the incoming administration could choose to redo the evaluation in a more holistic fashion as science advisors, environmentalists and public health advocates have urged EPA to do.

And it will have a vehicle on which to build, should it choose to take this approach: the separate "Part 2" supplemental evaluation of legacy asbestos uses EPA consented to conduct after a pivotal November 2019 appellate court ruling on evaluating legacy uses in TSCA evaluations.

The evaluation is the eighth of the first batch of 10 the agency is scrambling to complete under TSCA by the Trump administration's end.

The just-finalized assessment finds that 16 uses of chrysotile asbestos pose unreasonable risk to workers, consumers and bystanders, including "processing and industrial/commercial use of diaphragms in the chlor-alkali industry, sheet gaskets used in chemical production, industrial/commercial use and disposal of brake blocks in oil industry, commercial and consumer use and disposal of aftermarket automotive brakes/linings, commercial use and disposal of other vehicle friction products and commercial and consumer use and disposal of other gaskets," according to EPA's non-technical summary.

These unreasonable risks pose health concerns including "mesothelioma, lung cancer, and other cancers from chronic inhalation."

EPA has a statutory deadline in TSCA to propose risk management rules for unreasonable risk determinations within one year of publication and to finalize those actions within two years.

EPA also concludes that the other 16 uses it included in the risk evaluation, "import of raw chrysotile asbestos, the import and distribution of the chrysotile asbestos-containing products evaluated, the use and disposal of brakes for a specialized NASA transport plane, and the disposal of sheet gaskets processed and/or used in the industrial setting" did not present unreasonable risks that needed to be regulated.

Once published in the Federal Register, these no unreasonable risk determinations become final agency actions that will almost certainly be challenged in federal court, as other such findings associated with earlier evaluations of other chemicals have been.

Already, the Asbestos Disease Awareness Organization (ADAO) has blasted the chrysotile evaluation as shoddy, saying it ignores recommendations from science advisors and will delay action on legacy sources of asbestos exposure.

"EPA's final risk evaluation ignores the numerous recommendations of its own scientific advisors and other independent experts by claiming that these deficiencies will be addressed in a future Part 2 evaluation," Linda Reinstein, ADAO co-founder and president, said in a Dec. 30 statement. "Based on this sleight-of-hand maneuver, the Agency has issued a piecemeal and dangerously incomplete evaluation that overlooks numerous sources of asbestos exposure and risk, and understates the enormous toll of disease and death for which asbestos is responsible."

SACC's Criticisms

EPA's unreasonable risk findings for the associated uses are unchanged from EPA's April 2020 draft evaluation -- a surprise given the damning report EPA's Science Advisory Committee on Chemicals (SACC) released following its peer review of the draft evaluation last June.

In their final report, the advisors called the draft version of the evaluation inadequate and deficient and urged officials to broaden the evaluation to consider more uses of multiple types of asbestos before finalizing it.

"Overall, EPA's environmental and human health risk evaluations for asbestos was not considered adequate and resulted in low confidence in the conclusions," SACC's Aug. 28 report states.

Among other things, SACC urged EPA to consider other asbestos fiber types and so-called "legacy uses" as well as uses for which there is no longer ongoing manufacturing, but where asbestos remains in use across the United States, as in the insulation, plumbing, roofing and flooring of many older buildings.

"The Committee encourages EPA to incorporate into the assessment other asbestos and asbestos-like fibers in addition to chrysotile exposure beyond the six conditions of use (COUs) evaluated. Because certain exposure sources (drinking

water, talc, asbestos-containing building materials, vermiculite, etc.) are not included in this evaluation, the estimate for total exposure to asbestos is deficient," the report states.

But SACC's report failed to capture the full extent of its concerns. Some members had even discussed whether it was possible for them to recommend that EPA discard the draft and re-start fresh with a new, broader evaluation that included other asbestos fiber types and legacy uses to convey a more complete picture of risks associated with exposure to asbestos.

However, SACC Chairman Ken Portier, a biostatistician retired from the American Cancer Society, told the panel that such a recommendation would "border on a policy" recommendation the SACC could not make, because SACC's charge is scientific, not policy.

Despite the SACC's urgings, EPA has stuck with its plan to conduct two separate evaluations of asbestos, a decision Trump EPA toxics chief Alex Dunn defended in an interview with *Inside TSCA* last June.
"The agency believes this is the most health-protective path forward," she said, before arguing that a supplemental risk review would "ensure a higher quality evaluation of legacy uses and associated disposals" and that "halting work" on the pending draft risk evaluation to include legal considerations would "delay work on any risk management regulations that would be needed to address unreasonable risk presented in final risk evaluations."

Response To Comments
In its response to comments document, EPA echoed Dunn's message, saying it will "evaluate legacy asbestos uses and associated disposals of those uses in Part 2 of the Risk Evaluation for Asbestos."
"Prolonging finalization of the risk evaluation for chrysotile asbestos (Part 1 of the Risk Evaluation for Asbestos), by expanding the document to also evaluate legacy uses (where only use and associated disposal is present) would significantly delay needed risk management to address COUs where unreasonable risk is present for chrysotile asbestos."

Instead, EPA agreed to the SACC's recommendation that if it did not broaden the evaluation, it rename it because the original title was misleading, as it implied a comprehensive study of risks from several forms of asbestos. "EPA agrees with the SACC and has changed the name . . . to Risk Evaluation for Asbestos Part 1: Chrysotile Asbestos."

EPA's Dec. 30 announcement explains the agency has "started planning" for what it calls "part 2 of the risk evaluation for asbestos and will engage stakeholders as part of and following development of the draft scope document to identify any additional reasonably available information that is relevant to part 2. The draft scope document will be made available for public comment mid-year 2021," EPA says.

EPA also notes that the U.S. Court of Appeals for the 9th Circuit's decision in *Safer Chemicals Healthy Families v. EPA*, which requires the agency to assess legacy uses, is the reason for crafting the supplement evaluation. The agency says the supplement will focus on "[l]egacy uses and associated disposals of asbestos."

The agency says the second evaluation will address "chrysotile and the other five fiber types of asbestos described in the TSCA Title II definition: crocidolite (riebeckite), amosite (cummingtonite-grunerite), anthophyllite, tremolite or actinolite."

Portier noted at SACC's meeting last June that one important issue to consider in the legacy evaluation's scope will be whether it includes exposures to asbestos as a contaminant or a byproduct.

Stan Barone, deputy director of the Risk Assessment Division within EPA's toxics office, told Portier the agency has not decided whether to evaluate risks from contaminant uses in the legacy evaluation.

"We're looking at this, trying to determine what are the conditions of use that are legacy uses, regardless of intentional or unintentional inclusion in products," he told SACC members. "Those are some difficult conversations . . . that we will have to discuss internally. We will put out a scope for public comment and that will include what the levels of exposure are and what the consequences of those exposures are."

Dicamba Settlement Claims Commence

Emily Unglesbee, DTN Progressive Farmer
https://www.dtnpf.com/agriculture/web/ag/crops/article/2020/12/30/soybean-farmers-can-now-file-dicamba

ROCKVILLE, Md. (DTN) -- Soybean farmers whose fields had yield losses resulting from off-target dicamba movement in the past six years can now file claims as part of a $400 million settlement with Monsanto (now a subsidiary of Bayer).

The claims period began on Dec. 29, 2020. The deadline to submit claims is May 28, 2021. Submit claims at or call 855-914-4672.

The settlement is part of Bayer's efforts to settle ongoing lawsuits involving its herbicides, including multi-district litigation pending in the U.S. District Court for the Eastern District of Missouri over dicamba injury claims. The settlement was originally announced in June 2020, but the agreement was not signed until December 2020, said Don Downing, an attorney with the St. Louis law firm Gray, Ritter & Graham, who serves as chair of the court-appointed executive committee that negotiated the settlement.

The legal settlement with Monsanto provides compensation for damage and yield losses occurring from the introduction of the Xtend crop system. Anyone with specific types of evidence of dicamba damage in soybeans in any of year from 2015 through 2020 is eligible to participate in the settlement -- $300 million is designated for soybean farmers and $100 for administrative costs. BASF was not part of the signed agreement.

Growers with non-soybean crop or plant injury in the multi-district litigation are in the process of settling their claims separately and privately with Bayer, Downing said.

"They will need evidence of dicamba symptomology on their soybeans and will need to produce yield records from which loss calculations can be made," Downing said.

As DTN has reported in the past, legally acceptable documentation of dicamba symptomology could include such things as photographs, state regulatory agency reports or expert agronomist opinions or notes. Yield loss evidence can be gleaned from field yield histories, crop insurance reports or readings from a calibrated yield monitor.

Farmers are able to complete the claim process on their own, can hire an attorney of their choice, or can retain one of the Plaintiffs' Executive Committee firms to assist with putting together the claim form and supporting documentation.

The settlement was negotiated by the court-appointed Plaintiffs' Executive Committee: Don Downing of Gray Ritter & Graham; Rene Rocha of Morgan & Morgan; Paul Lesko of Peiffer Wolf Carr Kane & Conway; Hart Robinovitch of Zimmerman Reed; James Bilsborrow of Weitz & Luxenberg; Paul LLP; Bev Randles of Randles & Splittgerber; Paul Byrd of Paul Byrd Law Firm.

To read more about the dicamba settlement, and who it applies to, see this DTN story: .

To read more about the larger $11 billion settlement over glyphosate that Bayer also negotiated this summer, in addition to this dicamba settlement, see this DTN story:

The Tragic Link Between Paraquat And Parkinson's Disease, And TorHoerman Law's Quest for Justice

Chad Finley, AccessWire
http://www.digitaljournal.com/pr/4929159

EDWARDSVILLE, IL / ACCESSWIRE / December 31, 2020 / Paraquat is putting farmers and farming communities across the nation in danger. The herbicide has been directly linked to Parkinson's disease and has already been banned in many countries, including China, Brazil, and the EU. This begs the question of why farmers in all 50 states are still able to utilize the dangerous chemical. TorHoerman Law is on a mission to bring awareness to this dangerous chemical, the risks involved, and the legal options available to those who suffer from Parkinson's linked to Paraquat exposure.

Paraquat is a chemical agent used primarily as an herbicide in no-till farming. It's most commonly used as a spray, being a less labor-intensive alternative to discing/standard tilling farming. As more weeds become resistant to RoundUp, Paraquats popularity in farming continues to grow across the US. In 2017, the last year in which data is available, use was estimated to be almost 10 million pounds annually in the United States.

The dangers of ingesting the chemical are fairly well-known, as a dose of just 2.5 grams is lethal. For this reason, it has been the cause of death in multiple suicides and accidental deaths. The immediate effects of Paraquat are deadly, but the lasting effects of Paraquat exposure may pose an even more sinister threat to farmers, pesticide applicators, tank fillers/mixers, and the families living in and around farming communities.

A 2011 study by theNational Institute of Health found that people exposed to Paraquat are approximately 2.5 times, or 250%, more likely to develop Parkinson's Disease. Parkinson's is a disorder of the central nervous system that affects movement, often in the form of tremors, stiffness, or loss of balance. Although certain medications can control the symptoms of Parkinson's, there is no cure. The disease typically affects those that are 50 years of age and older. Parkinson's is 1.5x more likely to present in men than women. Although often assumed that Parkinson's is a genetic condition,studies have shown that genetics is the primary contributor to only 10% of Parkinson's cases. Although genetics may lead to an individual's predisposition to develop the disease, scientists now know that environmental exposures like herbicides and pesticides are the leading cause of Parkinson's. Other causes are thought to be repeated head injuries and exposure to heavy metals. Early signs of Parkinson's may be small tremors, increasingly smaller handwriting, and sleep problems.

Studies in human cells demonstrated that low-level exposures to Paraquat causes cellular changes that mimic the effects of Parkinson's. In animal studies, Paraquat is used to induce Parkinson's disease so that scientists can study the disease. To be clear, researchers use Paraquat in animals to cause Parkinson's so they can better understand the disease. Yet, the EPA continues to allow farming communities to be exposed to this dangerous herbicide.

Chad A Finley, Torhoerman Law's lead Paraquat Parkison's disease injury lawyer, understands this unfortunate reality first-hand. The son of a multi-generational farming family in Illinois, Finley recalls being exposed to planes and sprayers applying herbicides such as Paraquat to fields surrounding his home from a very young age. As a child, he remembers going outside to watch the airplanes and sprayers make their passes through the fields. It was not until later in life that Finley began to realize how he, his family, and others in farming communities were being highly exposed during and after spraying.

For Finley, Parkinson's hits close to home. Finley's grandmother was a longtime sufferer of Parkinson's disease. Finley hopes to bring greater awareness to both farmers actively utilizing the dangerous chemical and individuals who have developed Parkinson's as a result of Paraquat exposure.

"Most people in farming communities have no idea that Paraquat causes Parkinson's or that the chemical is banned in many countries." explained Finley. "They need this information to protect themselves and their families."

Unfortunately, the link between Paraquat and Parkinson's disease is still widely unknown to the public. Many farmers may be using the herbicide spray and putting their entire communities at risk simply because the dangers are not known by farmers. Well-meaning farmers may incorrectly assume that simply because a chemical is made available that it is safe to use. This could not be further from the truth.

If you or someone you know is currently suffering from Parkinson's disease and believe it may be linked to Paraquat exposure, TorHoerman Law urges you to contact the Environmental Protection Agency (EPA) immediately. In 2019, the EPA started taking public comments regarding the human health risks of Paraquat. Despite receiving requests to ban Paraquat from scientists, researchers, farmers, and advocate groups like the Michael J. Fox foundation, on October 23, 2020, the EPA refused to ban Paraquat usage in the United States. The EPA proposed some new safety measures for use of Paraquat, but did not ban the herbicide.

Said Finley, "It was the wrong decision. The decision was an economic one, and is not based on the available science. It is unbelievable that countries like China have banned this product, but the United States hasn't. Even the EPA has banned Paraquat in residential areas, but they continue to allow farming communities to be exposed. People have been hurt and if Paraquat isn't banned they are going to continue to be hurt."

Chad A Finley and his team at TorHoerman Law are actively accepting Paraquat lawsuit cases. If you or a loved one were exposed to Paraquat and subsequently developed Parkison's disease, Contact TorHoerman Law today to learn about your legal option. Visit Torhoerman Law Paraquat lawsuit page and use the chatbot to get a free, instant online case evaluation today to find out if you qualify for a Paraquat lawsuit.

EPA Releases Report Compiling Letter Peer Review Comments on Revised Draft Risk Evaluation of PV29

Lynn L. Bergeson and Carla N. Hutton, Bergeson & Campbell Blogs
http://www.tscablog.com/entry/epa-releases-report-compiling-letter-peer-review-comments-on-revised-draft

On December 21, 2020, the U.S. Environmental Protection Agency (EPA) announced that a report compiling the letter peer reviewers' comments on the revised draft Toxic Substances Control Act (TSCA) risk evaluation of C.I. Pigment Violet 29 (PV29) is now available in Docket EPA-HQ-OPPT-2018-0604. EPA states that it is in the process of reviewing the letter peer reviewers' comments and will use the feedback received from the peer review and public comments to inform the final risk evaluation.

According to EPA, after it issued the draft risk evaluation in November 2018, it received additional data in response to test orders, as well as additional information voluntarily submitted by the sole U.S. manufacturer. EPA states that these new data led it to revise its analytical approach for evaluating the potential exposure and health effects of PV29. As a result of this updated analysis, the revised draft risk evaluation now shows unreasonable risk to workers for 11 out of 14 conditions of use. Because these new data had a significant impact on EPA's risk evaluation and ultimately the risk determinations, EPA provided an opportunity for the public to give input before issuing the final risk evaluation.

EPA notes that it also conducted a letter peer review of the revised draft risk evaluation using independent scientists, including one who has served as a member and several who have served as ad hoc peer reviewers for the TSCA Science Advisory Committee on Chemicals (SACC). The peer review focused on charge questions supplied by EPA. The report made available December 21, 2020, is the result of this letter peer review.

EPA Intends Proposed Rule to Increase Flexibility and Reduce Burdens under TSCA Fees Program

NA, Bergeson & Campbell Blogs
https://www.lawbc.com/regulatory-developments/entry/epa-intends-proposed-rule-to-increase-flexibility-and-reduce-burdens-under

On December 21, 2020, the U.S. Environmental Protection Agency (EPA) released a proposed rule that would amend the 2018 Toxic Substances Control Act (TSCA) fees rule. According to EPA, the proposed rule "reflects real-world situations, narrows the broad scope of current requirements, significantly reduces the burden on American businesses, and increases the flexibility for surrounding TSCA fees requirements." Under TSCA, EPA collects fees from chemical manufacturers and processors to help fund implementation and to ensure that public health and the environment continue to be protected. TSCA requires EPA to review its fees every three years and, after consulting with parties potentially subject to the fees, to adjust the fees if necessary. The proposed rule describes the proposed modifications to the TSCA fees and fee categories for fiscal years 2022, 2023, and 2024 and explains the methodology by which these TSCA fees were determined. The proposed updates include:

Regarding EPA-initiated risk evaluations, narrowing the scope of the TSCA fees rule by exempting from the requirement to pay fees importers of articles containing a chemical substance, companies that produce a chemical as a byproduct or manufacture or import as an impurity, companies that manufacture or import a chemical in de minimis amounts, companies that manufacture or import chemicals solely for research and development (R&D) purposes, and companies that produce a chemical as a non-isolated intermediate;

Using cost data gathered over the past two years, instead of estimates, to update the fee calculations;

Ensuring fees are fairly and appropriately shared across companies by proposing a production-volume based fee allocation and including export-only manufacturers for EPA-initiated risk evaluations;

Allowing for corrections to be made to the list of manufacturers subject to fees for EPA-initiated risk evaluations after the final list is published, ensuring the accuracy of the list;

Increasing flexibility for companies by extending the amount of time to form consortia to share in fee payments;

Ensuring that EPA can fully collect fees and enabling companies to prepare better for paying fees by allowing payments in installments for EPA-initiated and manufacturer-requested risk evaluations (MRRE); and

Adding three new fee categories; two associated with new chemicals activities and one with test orders.

Comments will be due 45 days after EPA publishes the proposed rule in the Federal Register.

What Action Is EPA Taking?

The proposed rule would establish, update, and/or revise fees collected from manufacturers (including importers) and, in some cases, processors, to defray some of EPA's costs related to activities under TSCA Sections 4, 5, and 6; the rule would also involve EPA collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA Section 14 information on chemical substances. EPA proposes updates and changes to the 2018 fees rule, including: (a) the addition of three new fee categories -- a Bona Fide Intent to Manufacture or Import Notice (bona fide notice), Notice of Commencement of Manufacture or Import (NOC), and an additional fee related to test orders; (b) the addition of exemptions for manufacturers subject to fees for EPA-initiated risk evaluations under TSCA Section 6(b), including: exemptions for manufacturers if the chemical substance is imported in an article, produced as a byproduct, or produced or imported as an impurity, an exemption for R&D activities, an exemption for manufacturers of chemical substances produced as a non-isolated intermediate, and an exemption for entities manufacturing less than 2,500 lb of a chemical; (c) updates to TSCA Sections 4, 5, and 6 costs and costs of relevant information management

activities, as well as fee calculation methodology; and (d) various changes to how the fee regulations are implemented, including certain timing requirements throughout the fee payment process. EPA notes that it is not proposing to change the "small business concerns" definition.

Why EPA Is Taking the Action

EPA states that the proposed fees are intended to achieve the goals articulated by Congress by providing a sustainable source of funds for EPA to fulfill its legal obligations under TSCA Sections 4, 5, and 6 and with respect to information management. According to EPA, these activities include designating applicable substances as high and low priorities for future risk evaluation, conducting risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, requiring testing of chemical substances and mixtures, and evaluating and reviewing new chemical submissions, as required under TSCA Sections 4, 5, and 6. The activities also include collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA Section 14 information on chemical substances under TSCA. EPA reviewed fees established in the 2018 fees rule and determined that it is necessary to adjust the fees. EPA is proposing changes to the TSCA fee requirements established in the 2018 fees rule based upon more than two years of TSCA fee implementation and is proposing to adjust the fees based on changes to program costs and inflation and to address certain issues related to implementation of the fee requirements.

Estimated Incremental Impacts of the Proposed Rule

EPA states that it evaluated the potential incremental economic impacts of the proposed rule for fiscal years (FY) 2022 through 2024. The proposed rule briefly summarizes the "Economic Analysis of the Proposed Rule for Fees for the Administration of the Toxic Substances Control Act" (Economic Analysis), which will be available in Docket ID EPA-HQ-OPPT-2020-0493 at https://www.regulations.gov/ when the proposed rule is published in the Federal Register:

Benefits. The principal benefit of the proposed rule is to provide EPA a sustainable source of funding necessary to administer certain provisions of TSCA.

Cost. The fees collected from industry for the proposed rule under the proposed options, annualized over the period from FYs 2022 to 2024, are approximately $22 million (at both three percent and seven percent discount rates), excluding fees collected for MRREs. Total annualized fee collection was calculated by multiplying the estimated number of fee-triggering events anticipated each year by the corresponding fees. Total annual fee collection for MRREs is estimated to be $1.9 million for chemicals included in the 2014 TSCA Work Plan (based on two requests over the three-year period) and approximately $5.7 million for chemicals not included in the TSCA Work Plan (based on three requests over the three-year period). EPA analyzed a three-year period because TSCA requires EPA to reevaluate and adjust the fees, as necessary, every three years.

Small entity impact. EPA estimates that 35 percent of Section 5 submissions will be from small businesses that are eligible to pay the Section 5 small business fee because they meet the definition of "small business concern." "Small business concern" means a manufacturer or processor that meets the size standards at 40 C.F.R. Section 700.43. Total annualized fee collection from small businesses submitting notices under Section 5 is estimated to be $411,000. For Sections 4 and 6, reduced fees paid by eligible small businesses and fees paid by non-small businesses may differ because the fee paid by each entity would be dependent on the number of entities identified per fee-triggering event and production volume of that chemical substance. EPA estimates that the average annual fee collection from small businesses for fee-triggering events under Sections 4 and 6 would be approximately $8,000 and $922,000, respectively. For each of the three years covered by the proposed rule, EPA estimates that the total fee revenue collected from small businesses will account for about six percent of the approximately $22 million total fee collection, for an annual average total of approximately $1.3 million.

Environmental justice. EPA states that the fees will enable it to protect better human health and the environment, including in low-income and minority communities.

Effects on state, local, and tribal governments. The rule would not have any significant or unique effects on small governments, or federalism or tribal implications.

Commentary

We commend EPA for issuing timely the proposed rule and for including provisions that address practical issues that have arisen in the implementation of TSCA to date, in particular regarding MRREs. The inclusion of the three additional fee categories and the associated fees, i.e., for bona fide notices ($500/$90 for small businesses), NOCs ($500/$90 for small businesses), and an additional fee related to amended test order submissions ($9,800) are reasonable in light of the costs incurred by EPA in collecting, processing, reviewing, and providing access to and protecting from disclosure information as appropriate under TSCA Section 14.

The proposed addition of new exemptions for manufacturers and importers subject to fees for EPA-initiated risk evaluations appears well-considered and largely reflective of industry stakeholder input. These exemptions include those for manufacturers when the chemical is imported as part of an article; produced as a byproduct; produced or imported as an impurity; produced or imported in small quantities for R&D; produced as a non-isolated intermediate; and produced or imported in quantities of less than 2,500 lb per year. With regard to entities that manufacture chemicals as a byproduct, we would not be surprised to see EPA refine the proposed exemption to limit the exemption to be consistent with the exemption for byproduct producers under the TSCA Section 5 Premanufacture Notification and the TSCA Section 8 Chemical Data Reporting regulations. Under those regulations, entities that manufacture substances as byproducts for certain separate commercial purposes are required to report; in this light, coverage of these byproduct manufacturers under the fees rule seems both reasonable and practicable.

EPA's proposed addition to the set of manufacturers required to pay fees for EPA-initiated risk evaluations of entities that manufacture a subject chemical solely for export whenever such substance is manufactured, processed, or distributed in commerce by any other entity for any purpose other than export from the United States may raise some eyebrows. TSCA Section 12(a) exempts chemicals manufactured for export, and there is no exception to the exemption for purposes of fee assessment under TSCA Section 26 (as there is for requirements under Sections 4, 8, and 12(b), and if the chemical is found to present an unreasonable risk in the United States). Based on these differences, we question whether EPA's position is supportable, recognizing ambiguities in TSCA Section 12(a), e.g., whether the exemption applies on a chemical-, entity-, or shipment-specific basis.

EPA's proposed new production/import volume-based methodology for calculating fees shares for EPA-initiated risk evaluations should be welcomed generally, but may present additional implementation complexities. It could also result in anomalous situations where small manufacturers are required to bear a disproportionate share of the fees. There may also be circumstances in which the proportion of fees might divulge a particular company's production volume (or average production volume). An alternative that stakeholders should consider is a tonnage band model. That way, a fee proportion cannot be used to back-calculate another's production volume.

Given all the surprises that potential fee payers faced in the spring when EPA published the preliminary lists of fee payers for the "next 20" substances undergoing risk evaluation, stakeholders may wish to consider carefully the implications of the various fee scenarios.

Editorial: Oregon chlorpyrifos action puts farmers in a pinch

NA, Capital Press

https://www.capitalpress.com/opinion/editorials/editorial-oregon-chlorpyrifos-action-puts-farmers-in-a-pinch/article_bac8c87a-457a-11eb-95a0-575b8b0739fd.html

In its decision to phase out the pesticide chlorpyrifos, the folks at the Oregon Department of Agriculture appear to have forgotten someone: the farmers.

Chlorpyrifos is an insecticide that's been around 55 years. It is used on dozens of crops in Oregon to keep insects, worms and mites at bay. It is also used on golf courses and in greenhouses, wood treatments and roach traps and to kill mosquitoes.

Chlorpyrifos is an important tool. It works well and is affordable. On farms and in commercial settings, additional training and protective equipment such as respirators, gloves and coveralls are required when the insecticide is applied, and the fields are off-limits to others until deemed safe. Household uses, where most of the concern was centered, have already been banned or phased out.

Instead of awaiting direction from legislators, whose job it is to write laws and make policy, the state agriculture department went ahead and convened a work group to come up with a plan to phase out the use of chlorpyrifos. That's fine.

But, importantly, the ODA neglected to offer Oregon farmers adequate help in finding alternatives or replacements for chlorpyrifos. Just because an insecticide is banned doesn't mean the insects will go away on their own.

An undocumented letter that was circulated in the legislature last year by a lobbyist for the organic industry said that dozens of alternatives for chlorpyrifos are already available to farmers.
That was apparently wrong. Either that, or someone lost the list.

Now Oregon researchers are playing catch-up to find alternatives and replacements for chlorpyrifos that are effective and affordable.

And, unfortunately, they are trying to do it without adequate funding.

Since chlorpyrifos was banned in California, the state has provided more than $5 million in grants for research into alternatives.

In Oregon, researchers have $381,107 from two USDA specialty crop grants to do the same job. That will address a handful of crops out of the more than 50 on which chlorpyrifos is used.

Depending on what the researchers find, it could be years before the alternatives and replacements are fully labeled and available for use.

Under the ODA plan, chlorpyrifos will be phased out for most uses by the end of 2023.

For the state's farmers, the clock is running on whether adequate replacements and alternatives will be in place by that deadline.

Without adequate state funding for research, the odds of meeting that deadline are slim. We urge the ODA to work with legislators to adequately fund this research.

$20 Million TSCA/Lead-Based Paint Penalty: Expensive Reminder to Manage and Audit Contractors' Joint Regulatory Liabilities

Patrick Larkin, JD Supra (Clark Hill PLC)
https://www.jdsupra.com/legalnews/20-million-tsca-lead-based-paint-41835/

Renovation of homes built before 1978 frequently disturbs lead-based paint (LBP) and poses significant health risks, particularly for children. For this reason, companies that perform or subcontract renovation services are required to provide very specific, written LBP warnings and education materials to residents. Failure to comply with these obligations can result in significant penalties for non-compliance. The U.S. Environmental Protection Agency (EPA) enforces these rules on all companies that "perform renovations for compensation." This means that retail sellers of renovation products (e.g., windows or woodwork) can face EPA enforcement for noncompliance even where they subcontract installation to third parties.

On Dec. 17, U.S. EPA and the Department of Justice (DOJ) announced a nationwide settlement with Home Depot related to home renovations that occurred between 2013 and 2019. The settlement resolves alleged violations of the EPA's Lead Renovation, Repair, and Painting (RRP) Rule involving renovations performed by Home Depot's contractors across the country on homes built before 1978. EPA identified hundreds of instances in which Home Depot failed to contract renovations or repairs with certified contractors, as well as instances in which Home Depot failed to establish, retain, or provide the required documentation to demonstrate compliance with the RRP Rule.

EPA's proposed settlement with Home Depot includes a $20.75 million penalty—the largest such penalty to-date under the Toxic Substances Control Act (TSCA).

Compliance Lessons

Companies in the construction industry and beyond can learn several significant lessons from the Home Depot violations, including the importance of:

Understanding Your Liability: Businesses sub-contracting regulated activities to third parties are not necessarily insulated from liability. Here, since Home Depot contracted with customers and received compensation to perform renovations of pre-1978 housing, it remained liable under the RRP Rule, regardless of its use of subcontractors. Home Depot failed to actively assess and control risk from noncompliance by itself and its subcontractors, resulting in a significant penalty. Understanding your liability, particularly in the context of subcontracting, is an important step towards reducing enforcement exposure for your business.

Being Proactive about Compliance: Another important step to reducing your enforcement exposure is implementing a compliance management system to identify potential issues before they become a problem. A strategic option to reduce such exposure can be the use of environmental self-audit/self-disclosure programs, such as EPA's Audit Policy. The EPA Audit Policy allows companies to reduce or eliminate penalty exposure from noncompliance at their facilities. In addition, under the LBP Consolidated Enforcement Response and Penalty Policy, renovators may succeed in receiving gravity-based penalty reduction for any RRP Rule violations that qualify for such reduction under EPA's Audit Policy. While navigating the EPA self-audit program can be challenging, the benefits can often be great for businesses. Small businesses and new business owners, in particular, may wish to take advantage of the tailored incentives potentially available to them, including the ability for new owners to enter into audit agreements with EPA to receive affirmative resolution and negotiated timelines for completing corrective actions.

Environment 2020: A year of major wins, but also major losses

Lisa Sorg, NC Policy Watch
http://www.ncpolicywatch.com/2020/12/31/environment-2020-a-year-of-major-wins-but-also-major-losses/

If it didn't create air pollution, I'd burn my 2020 calendar. A terrible, awful year, despite a few, albeit significant environmental wins.

Climate change, of course, continued unabated. Otherwise, without a massive coal ash spill or major hurricane to capture the public's attention, the environmental losses were quieter, more piecemeal, albeit also significant: A proposed mine in Caswell County, an approved one in Alamance. A proposed Land Clearing and Inert landfill in Vance County. Yet another wood pellet plant whose air permit was approved by DEQ; it's near tribal lands in Robeson County. A proposed plant that would convert creosote-treated railroad ties into "biochar" and emit air pollutants near a Black neighborhood in Richmond County.

In Duplin and Sampson counties, an expansive biogas project by Smithfield Foods and Dominion Energy would capture methane but entrench the open lagoon and spray system — and key details of the plan are secret. To illustrate just how outdated and perilous an open waste lagoon is, four days before Christmas, DC Mills Farm in Jones County discharged 1 million gallons of hog waste into a tributary of the Trent River.

And because of Colonial Pipeline's enormous gasoline spill in Huntersville this year, the Top 5 environmental issues in North Carolina had to be expanded to six. The list could have been expanded further, but that would have been piling on.

1. A red alert on PFAS in drinking water
A year ago we knew PFAS, perfluorinated compounds, were bad for human health. Now we know they're even worse.

Scientists and toxicologists in North Carolina and nationwide have held countless webinars, written scientific papers, testified before Congressional subcommittees and essentially yelled from rooftops that PFAS exposure is a public health crisis. Known as "forever chemicals" because it takes decades, if not hundred of years, for them to degrade in the environment, PFAS have been linked to kidney and testicular cancer, thyroid disorders, obesity, Type II diabetes, as well as harm to the developing brain and reproductive disorders. Recently, toxicologists found that high blood levels of PFAS can suppress the immune system and decrease the response to the COVID-19 vaccine.

Yet as the science has advanced, regulations have stagnated; hundreds of thousands of North Carolinians continue to be exposed through their public drinking water supplies, including Pittsboro, Cary, Wilmington, Brunswick County, Sanford and Fayetteville — as well as private drinking water wells. DEQ has recommended setting groundwater standards for two types of the compounds, PFOA and PFOS, which must be approved by the Environmental Management Commission. But that still leaves thousands of types of compounds unregulated in drinking water.

DEQ and Chemours, along with Cape Fear River Watch, agreed to a consent order that requires the company to essentially eliminate its air emissions containing the compounds. But most of the provisions in the order directly benefit the communities nearest the plant; downstream, in Wilmington and Brunswick County, any improvements would just trickle down.

Another toxic compound with a more cumbersome name, 1,4-Dioxane, has also been detected in drinking water supplies throughout the Cape Fear River Basin. It's also been found in landfill leachate — basically the garbage juice that collects in tanks at the bottom of landfills and then is discharged to wastewater treatment plants. In turn, treated wastewater is often used as fertilizer on farm fields, replete with 1,4-Dioxane that can't be removed by traditional treatment methods.

Big surprise: There is no drinking water standard for 1,4-Dioxane, either.

What's next: Once PFAS are in the waterways, it's impossible, at least using current technologies, to remove it. In which case, the contamination must be stopped at the source, of which there are many: industrial discharges, wastewater treatment plants, air emissions. The EPA has issued lot of word salad about its plans to regulate PFAS, but has yet to draft any meaningful regulations, which should be a priority of the next administration.

The state Science Advisory Board recently discussed regulating PFAS as a class, but the SAB can only offers advice, not enact regulations. Industry opposes regulating PFAS as a class, but from a toxicological standpoint, it makes sense because the compounds share common chemistry, and so far have been linked to several of the same health problems.

Chemours has yet to submit its revised Corrective Action Plan to address GenX and other PFAS in the groundwater and drinking water within 10 to 12 miles of the Fayetteville Works plant. NC Attorney General Josh Stein is suing DuPont and Chemours over drinking water contamination.

As for 1,4-Dioxane, on Jan. 14, the Environmental Management Commission is scheduled to issue a final Special Order by Consent with the City of Greensboro for its unlawful discharges of that compound into the drinking water supply.

2. DEQ Secretary Michael Regan's big promotion

Experience soothing hostile lawmakers? Check.
A record of valuing science and empowering rank-and-file employees over politics? Got it.
A history of leading an agency whose budget has been cut to the bone marrow? Yep.
Any interest in building a $43,000 secret phone booth in his office? Not that we know of.

Michael Regan, you're the next EPA administrator.

When President-elect Joe Biden picked Regan to lead the beleaguered agency, it was not the boldest choice, but the most pragmatic one. Over the past four years in North Carolina, Regan has had to navigate the state's political minefields and withstand the routine and ruthless winnowing of DEQ's budget. North Carolina's dysfunctional legislative branch is like Congress, but in miniature.

Yet it was Regan's advocacy for environmental justice and clean energy that caught the Biden administration's eye. Progress on both of those issues has been incremental, but has been a refreshing change from the retrograde that occurred under Gov. Pat McCrory. And Regan has experience at the EPA: He worked in the air division for nine years, under Presidents Bill Clinton and George W. Bush.

As EPA administrator, Regan must immediately address the nationwide problem of PFAS in the drinking water supply. North Carolina is one of dozens of states whose waterways and drinking water are rife with the toxic compounds. The EPA must set a legally enforceable standard that is most protective of human health. Even though DEQ doesn't have the sweeping powers of the EPA, the agency did not forcefully wield its authority under Regan, to the chagrin of many environmental advocates.

What's next: Regan must be confirmed by the U.S. Senate, which is likely. However, if that chamber balks, it's possible that President Biden could crib from the Trump playbook and name Regan as "acting" administrator. Gov. Cooper will appoint the next DEQ Secretary. Until 2017, the state Senate had rarely exercised its right to confirm gubernatorial nominees, but once Republicans gained the majority over a Democratic governor, lo and behold, lawmakers dusted off the rulebook and decided to require it.

3. Hog nuisance lawsuits + 'ag-gag' law struck down

A photo from inside a hog barn at Joey Carter's farm in Duplin County. Murphy-Brown owns the hogs, and is being sued for nuisance over odors, flies, buzzards and truck traffic, which are affecting neighbors' quality of life. (Photo part of court exhibits)
When you've lost the heart and legal mind of a conservative federal judge, there is no redemption. After six years of legal maneuvering through the federal courts, multiple jury verdicts worth millions of dollars, all against Murphy-Brown/Smithfield Foods, it came down to three appellate judges at the Fourth Circuit Court of Appeals.

In November after nearly 11 months of deliberation, the panel ruled 2-1 in favor of multiple jury verdicts at the district court level, ruling that Murphy-Brown, the world's largest pork producer, was indeed liable for nuisance. The plaintiffs, all Black neighbors of industrialized hog farms, had long been subjected to the stench, flies, vultures and truck traffic from these behemoth operations. And no, contrary to what the hog industry and its supporters said, the neighbors weren't making it up.

Judge Harvie Wilkinson III, a Reagan appointee, tipped his hand during initial oral arguments and seemed outraged at the conditions detailed in the court documents. "If this were my property I'd be outraged at some of these conditions that were allowed to persist. Less fortunate citizens have property rights, too. They have a right to good health and enjoyment of their property. If this were some McMansion surrounding hog farming operations, or houses of the affluent and more politically powerful were here, wouldn't these conditions have been cleared up sooner rather than later? That is my problem."

In his concurring opinion, Wilkinson wrote that not only are people suffering as a result of industrialized hog farming, but so are the animals. "Charlotte's Web reminds us that all life is interconnected," Wilkinson wrote. "And while not all pigs will be pardoned like Wilbur, it is fitting that the creatures who give their very lives for us, receive in return our efforts to make their brief stay on earth less intolerable. For their sake and ours. Such is the web of life."

Another loss for the industrialized livestock industry occurred in June, when a federal district court judge in North Carolina struck down the state's 2015 "ag-gag law." "Greenwashed" as the "Property Protection Act," it allowed courts to assess civil penalties on employees who took videos or photos of a business's non-public areas to document alleged wrongdoing, and then passed that information to anyone besides the employer or law enforcement.

While bill supporters argued that it protected businesses from the theft of trade secrets, its underlying intent was to thwart animal rights activists from getting hired at farms and research labs and then conducting undercover investigations. However, the law was broad enough that it could have applied to any employee. For example, law enforcement officers who documented abuses by fellow officers — but didn't have faith in their supervisors to act — could have also been penalized had that information been passed to outside parties.

Workers at nursing homes or meatpacking plants who wanted to document sanitation practices during COVID-19 and pass the photos or video to the media could have been penalized. And whistleblowers who provided photo or video evidence to reporters could have been fined.

What's next: Smithfield/Murphy-Brown is settling the hog nuisance suits out of court with the plaintiffs, with the terms as yet undisclosed.

However, lawmakers pass a Farm Act every legislative session, and it usually contains provisions that shield Big Ag from impunity. The next session begins Jan. 13 and will likely last until at least June.

Meanwhile, two civil rights attorneys Elizabeth Haddix and Mark Dorosin are suing the legislature over the 2017 and 2018 Farm Acts on constitutional grounds. They argue that state lawmakers violated the North Carolina constitution when they passed legislation that stripped residents of their right to sue industrialized hog operations for nuisance. The

legislation is unconstitutional, they say, because it creates a special class of people who are prohibited from suing agricultural and forestry operations for nuisance. Oral arguments were heard in Wake County earlier this month.

As for the ag-gag law, the state of North Carolina has not yet appealed the case to the Fourth Circuit. Since Attorney General Josh Stein, a Democrat, was not in office when the law passed under a Republican administration, he might choose not to spend taxpayer funds appealing the case.

4. Atlantic Coast Pipeline, RIP

Donovan McLaurin refused to negotiate with Dominion over access to 11 acres of his farm near Wade, in Cumberland County. With federal approval, the utility seized the parcel for the Atlantic Coast Pipeline. Now that the project is canceled, it's unclear how the land will be fully restored. (File photo: Lisa Sorg)
It was just another Sunday afternoon, on the Fourth of July weekend, when the news traveled over the transom: Duke Energy and Dominion Energy had killed the Atlantic Coast Pipeline. Surely this was fake news. The utilities had just won a major U.S. Supreme Court decision that removed some barriers for construction on the the 600-mile Atlantic Coast Pipeline to continue.

But no, it was true. The utilities had dumped their $8 billion natural gas albatross after deciding the costs would only rise, cutting into company and shareholder profits.

The ACP would have routed beneath 160 miles in eastern North Carolina, including through many communities of color and tribal lands. The clear-cutting and drilling beneath major rivers and drinking water supplies would have wreaked environmental damage. And the investment in fracked natural gas, with its attendant methane emissions, was anathema to meaningful progress in reversing climate change.

What's next: The utilities are responsible for restoring areas that were excavated and clear cut for the route; that could take years. A separate project owned by different energy companies, the Mountain Valley Pipeline Southgate, is still in flux. It would run through parts of Rockingham and Alamance counties. DEQ denied a water quality permit for the project, and questioned the need for more natural gas in North Carolina. The companies can reapply, but since the main trunk of the project, the MVP, is encountering major legal hurdles in Virginia, the future of both projects is hazy.

5. Colonial Pipeline spill, the largest in state history

Colonial Pipeline installed dozens of monitoring wells in Huntersville to determine the extent of the contamination from the largest gasoline spill in state history. (File photo: Lisa Sorg)
We can thank two teenage boys gallivanting through a nature preserve in Huntersville for uncovering the largest gasoline spill in North Carolina history — 350,000 gallons and counting, according to the latest company report. The boys were riding ATVs when they spotted gasoline gurgling from beneath the ground, originating from a breach in a pipeline traversing under the Oehler Nature Preserve.

The mid-August accident triggered a 24/7 cleanup, which is ongoing, as well as a full-court press public relations campaign. Officials from the town of Huntersville, the fire department and Colonial filmed a chummy roundtable discussion about the heroic nature of the company's emergency response, yada, yada, yada. The town held several public meetings at which Colonial laid on the platitudes about their commitment to the community but supplied few substantive answers.

More than four months later, the shallow groundwater within a 1,500 foot radius of the spill is contaminated with cancer-causing chemicals. Even though tests haven't detected contaminants in drinking water wells, Colonial has purchased three homes and connected two more to a public water supply — out of an "abundance of caution" and "to minimize disruption," the company says.

The NC Department of Environmental Quality notified Colonial earlier this month that despite filing thousands of pages of tables and data, the company has failed to supply key information, including an explanation of how the spill went undetected for how long.

What's next: Colonial was supposed to have answered these questions in a report due Dec. 23. But the company asked DEQ for an extension and the filing is due Jan. 23.

6. Coal ash cleanup

Coal ash excavation (Photo: Duke Energy)
Back when 2020 seemed hopeful, DEQ announced in January that the agency and the Southern Environmental Law Center had settled with Duke Energy, requiring the utility to excavate 80 million tons of coal ash from its remaining unlined basins at six plants: Allen, Belews Creek, Cliffside/Rogers, Marshall, Mayo and Roxboro.

The ash must be dug up and deposited in lined landfills either on- or offsite, or recycled for beneficial use, such as in concrete.

Under legal pressure, Duke had already agreed to excavate the ash from the basins at its other eight facilities in North Carolina. Under this historic agreement, the excavation would finally cut off a source of groundwater and surface water contamination near those communities. The closure and excavation deadlines for the final sites range from 2028 to 2037.

Duke Energy said the agreement would save $1.5 billion in closure costs. The utility estimated it will spend $5.6 billion to $6.6 billion over the next 20 years on remediating the sites.

What's next: The perennial question — who pays for the clean up? Shareholders or ratepayers? Or both? The state Supreme Court ruled in mid-December that Duke Energy shareholders don't have to bear the full brunt of the costs, and ratepayers will cover at least half in higher energy bills.

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